

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MCC Iowa LLC)	CSR 7045-E and 7047-E
)	
Petition for Determination of Effective)	
Competition in two Iowa Communities)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 3, 2010

Released: March 3, 2010

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. MCC Iowa LLC (“Mediacom”), hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the Communities is subject to effective competition pursuant to Section 623(1)(1)(B) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). The City of Burlington, Iowa (“Burlington”) filed an opposition. Mediacom filed a reply.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

II. DISCUSSION

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”), each of which offers comparable video programming to at least 50

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area.⁶ This test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Communities to support their assertion that potential customers in the Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Communities by purchasing a subscriber tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Communities on a zip code and zip code plus four basis where necessary.¹⁵

⁶47 U.S.C. § 543(1)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 4.

⁹*Mediacom Illinois LLC et al., Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5.

¹²*See* Petition at 5 Exhibits B and C.

¹³*See* Petition at 3.

¹⁴*Id.* at 6.

¹⁵*Id.* A zip code plus four analysis allocates DBS subscribers to a franchise area using zip code plus four information that generally reflects franchise area boundaries in a more accurate fashion than standard five digit zip code information.

7. In opposition, Burlington argues that Mediacom failed to provide sufficient evidence to show that the DBS penetration exceeded the 15 percent minimum threshold.¹⁶ Specifically, Burlington argues that Census 2000 data may not be useful because it is outdated and a minor increase in the total number of households would serve to reduce the penetration level below the 15 minimum threshold.¹⁷ The City points out that Burlington has annexed over 300 acres into its city limits since the 2000 Census and that the annexation and other population and household changes in recent years could reduce the DBS penetration level.¹⁸ Also, Burlington requests a map that identifies the boundaries used so that it can ensure the accuracy of SBCA's report.¹⁹ Burlington acknowledges that it offers no census information that is more recent than that offered by Mediacom and that it is unable to identify errors in SBCA's report.²⁰ In addition, Burlington states that although Motorola Access Center ("MAC") subscribers were included by SBCA in arriving at residential subscriber totals, Mediacom failed to serve MAC with a copy of Mediacom's petition, pursuant to Section 76.7(a)(3) of the Commission's rules.²¹

8. In its reply, Mediacom argues that the City must demonstrate that another number is more accurate than Census 2000 data and Census information provides a reliable, unbiased, and consistent source of household data that is appropriate for use in connection with effective competition determinations.²² Regarding the 300 acres annexed to the City, Mediacom states that Burlington's claim fails to indicate that there has been any increase in the number of occupied households in the City.²³ With regard to the City's concern about the accuracy of the SBCA report, Mediacom states it filed information identifying all the nine digit zip codes of the households within the scope of the petition.²⁴ In addition, with regard to Burlington's concern about properly serving MAC, Mediacom states that regardless of whether serving notice to MAC is necessary, Mediacom served MAC with copies of the petition and other filings in this matter.²⁵

9. We reject Burlington's argument that the 2000 Census data is outdated since we have consistently held that 2000 Census data is sufficiently reliable for effective competition determinations.²⁶ Moreover, although the Commission will accept more recent household data that is demonstrated to be reliable, Burlington has not filed such data information.²⁷ Therefore, Mediacom's penetration data information, in the absence of more recent household data, is the most reliable data submitted in the record of this proceeding. The Commission also has repeatedly accepted SBCA's subscriber reports on

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¹⁶City of Burlington Answer to Petition for Special Relief at 3.

¹⁷*Id.*

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²Mediacom Reply at 2. *See* 47 C.F.R. § 76.7(a)(3).

²³Mediacom Reply at 2.

²⁴*Id.*

²⁵*Id.* at 2-3. Mediacom points out that only a small percentage of households receive this type of service nationwide.

²⁶*See e.g., Cablevision of Raritan Valley, Inc., et al.*, 19 FCC Rcd 6966, 6968 (2004); *Adelphia Cable Communications*, 20 FCC Rcd 4979, 4982 (2005); *MCC Iowa LLC*, 2005 WL 2513517 (2005).

²⁷*See Adelphia Cable Communications*, 20 FCC Rcd 4979, 4982 (2005).

behalf of DBS providers in satisfaction of Section 76.907(c) of the Commission's rules.²⁸ Section 76.907(c) clearly contemplates that cable operators may rely on such information in petitioning the Commission for a determination of effective competition. We accept the SBCA report submitted by Mediacom as reliable evidence relating to the DBS penetration rate. With regard to service of Mediacom's petition on MAC, Mediacom indicates that it has served MAC with its petition.

10. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,²⁹ as reflected in Attachment A, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Communities.

11. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Communities listed on Attachment A.

III. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by MCC Iowa LLC **ARE GRANTED**.

13. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

14. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.³⁰

FEDERAL COMMUNICATIONS COMMISSION

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²⁸See e.g., *Cablevision of Raritan Valley, Inc., et al.*, 19 FCC Rcd 6966, 6968 (2004); *Adelphia Cable Communications*, 20 FCC Rcd 4979, 4982 (2005).

²⁹Petition at 6.

³⁰47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7045-E and 7047-E

COMMUNITIES SERVED BY MCC IOWA LLC

Communities	CUID(s)	CPR*	2000 Census Household	Estimated DBS Subscribers
<u>CSR 7045-E</u> Windsor Heights	IA0037	15.77%	2,163	341
<u>CSR 7047-E</u> Burlington	IA0190	15.74%	11,102	1,747

*CPR = Percent of competitive DBS penetration rate.